

IN THE CIRCUIT COURT FOR JACKSON COUNTY, ALABAMA

EXHIBIT

GINGER WHITE,

Plaintiff,

v.

SEARS ROEBUCK AND CO., ALLISON B. MOON,
LVNV FUNDING, LLC, and RESURGENT CAPITAL
SERVICES, LP,

Defendants.

CV-06-323

CLERK

2006 DEC 1 PM 3:30

JACKSON COUNTY, ALABAMA
CLERK OF COURTCOMPLAINT

The plaintiff, for her complaint against the defendants, alleges as follows:

1. Plaintiff, Ginger White, is an adult resident of Jackson County, Alabama.
2. Defendant, Sears Roebuck and Co., is a non-resident corporation subject to personal jurisdiction within the State of Alabama.
3. Defendant, Allison B. Moon, is a non-resident individual who is subject to personal jurisdiction in the State of Alabama.
4. Defendant, LVNV Funding, LLC, is a non-resident limited liability company that is subject to personal jurisdiction in the State of Alabama.
5. Defendant, Resurgent Capital Services, LP, is a non-resident limited partnership that is subject to personal jurisdiction in the State of Alabama.

Facts

6. This case involves a creditor, a debtor, two debt collector entities, and an individual debt collector.
7. Sears issued credit to the plaintiff under account number 5121-0718-5530-6449.
8. This account was paid to a zero balance in late 2003 pursuant to a negotiated payoff between the creditor and the debtor.
9. Sometime after paying the account to a zero balance, Sears sold or transferred this account to a debt collector.
10. Collection contacts pertaining to this account and adverse credit reporting continued in spite of the fact that the account had been paid as negotiated.

11. In August of 2005, LVNV Funding, LLC, as assignee of Bank of America, N.A. sued Ginger White for the account balance that was previously negotiated and paid to a zero balance in late 2003.
12. In that collection case it was demonstrated to the collection attorney that the account on which he filed suit had been paid to a zero balance.
13. Based on this information, the collection action was dismissed, with prejudice, costs taxed as paid on September 30, 2005.
14. On December 7, 2005 the plaintiff received a dunning letter indicating that the account had been placed with Resurgent Capital Services, LP.
15. That correspondence identified Sears as the previous creditor, LVNV Funding, LLC as the current creditor, and identified the exact account number that was paid to a zero balance in late 2003.
16. Attached to that letter was a "Validation of Debt" from Allison B. Moon. Ms. Moon stated the following:

I, the undersigned, hereby certify and affirm that the account of Ginger White acquired from Sears is now owned by LVNV Funding, LLC. I further certify and affirm that at the time the account was acquired from Sears, that they advised that the balance owing was \$6,680.68. Since that time, additional interest has accrued in the sum of \$746.62 for a total balance of \$7,696.30.

I am familiar with the information LVNV Funding, LLC has regarding the account, and, to the best of my knowledge and belief, the balance owing is accurate as of the date set forth below, that all offsets, payments, and credits have been allowed.
17. This validation by Ms. Moon was patently false and grossly inaccurate in that no monies were owed.
18. In response to this dunning letter from Resurgent, counsel for Mrs. White disputed the validity of the debt, demanded verification of the debt, and demanded the name and address of the original creditor.
19. As of this date, none of that information has been received.
20. In connection with the agreement whereby Mrs. White was to pay the Sears charge card indebtedness to a zero balance, Sears promised that the account would be reported "paid in full for less than full balance".

21. This promise was made in October of 2003, prior to Mrs. White paying pursuant to the agreement in late 2003.
22. While Mrs. White honored her obligation, Sears did not.
23. Sears reported and continues to report this account as a "charge off".
24. The plaintiff has been damaged in that she has not been afforded the benefit of her negotiated arrangement with Sears, she has been the subject of unnecessary and unwarranted collection calls and letters, she has been denied credit, she has been upset and aggravated by this ordeal, including having been wrongfully sued, she has been denied credit, she has incurred attorney's fees, and in a nutshell, has been victimized by the defendants' failure to exercise the slightest degree of care or attention to their business dealings.

Count One

25. Sears breached its contract with the plaintiff resulting in damage to her.

Count Two

26. Sears and LVNV negligently transferred or sold the plaintiff's account for continued collection efforts when Sears and LVNV were undeniably aware that the account had been paid pursuant to a negotiated pay off, and in doing so, proximately damaged the plaintiff.

Count Three

27. Sears, Resurgent, and LVNV defamed the plaintiff by communicating untrue information concerning the plaintiff and her financial situation to others, including the big three credit reporting bureaus.

Count Four

28. Defendants Sears and LVNV violated the Fair Credit Reporting Act in that they knowingly communicated inaccurate information pertaining to the plaintiff to the major credit reporting bureaus and failed to correct inaccurate information communicated to the credit bureaus.

Count Five

29. Defendants LVNV, Moon, and Resurgent violated the Fair Debt Collection Practices Act in that they falsely represented the character, amount, and legal status of a debt they were attempting to collect. 15 U.S.C. §1692e(2)(A).

Count Six

30. Defendants LVNV, Moon, and Resurgent, by communicating with White at a time when they were aware she was represented by an attorney with respect to the debt they were attempting to collect, violated 15 U.S.C. §1692c(a)(2) of the Fair Debt Collection Practices Act, which provides:

... a debt collector may not communicate with a consumer in connection with the collection of any debt – if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer.

Count Seven

31. Defendants LVNV, Moon, and Resurgent violated the Fair Debt Collection Practices Act in that they sought to collect amounts not permitted by law.

Count Eight

32. All defendants violated the plaintiff's right to privacy in that they caused the plaintiff to be subject to an unnecessary and unwarranted collection campaign, which included, collection calls, dunning letters, and, in the case of LVNV, a baseless collection lawsuit.

Damages

33. For damages, the plaintiff seeks \$50,000 as well as the costs of this action and attorney's fees as provided by the Fair Debt Collection Practices Act and the Fair Credit Reporting Act.

Respectfully submitted,



WILL J. PARKS, III PAR091
ATTORNEY FOR PLAINTIFF,
GINGER WHITE

Will Parks, P.C.
Northside Courthouse Square
107 East Laurel Street
Scottsboro, Alabama 35768
256/574-1162
256/574-1167 (facsimile)
wparks@scottsborolawyer.com

Serve defendants as follows:

Sears, Roebuck and Co.
The Corporation Company
2000 Interstate Park Drive, Ste 204
Montgomery, Alabama 36109

Ms. Allison B. Moon
105 Rochester Court
Easley, South Carolina 29640

LVNV Funding, LLC
15 S. Main Street, Ste 700
Greenville, South Carolina 29601

Resurgent Capital Services, LP
The Corporation Company
2000 Interstate Park Drive, Ste 204
Montgomery, Alabama 36109

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v.

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SERVICES, LP,

Defendants.

CV-06-323

SUMMONS

NOTICE TO: Resurgent Capital Services, LP
The Corporation Company
2000 Interstate Park Drive, Ste 204
Montgomery, Alabama 36109

Doc

Circuit Clerk

2006 DEC 1 PM 3:30

FILED

The Complaint which is attached to this Summons is important, and you must take immediate action to protect your rights. You or your attorney are required to mail or hand deliver a copy of a written answer, either admitting or denying each allegation in the Complaint to the Plaintiff's attorney, **Will J. Parks, III, 107 East Laurel Street, Scottsboro, Alabama 35768 (256/574-1162)**. This answer must be mailed or delivered within thirty (30) days after this Summons and Complaint were delivered to you, or a judgment by default may be entered against you for the money or other things demanded in the Complaint. You must also file the original of your answer with the Clerk of this Court.

THIS SERVICE BY CERTIFIED MAIL of this Summons is initiated upon the written request of attorney for Plaintiff pursuant to the Federal Rules of Civil Procedure.

Ken Ferrell 12/1/06
Clerk Date

RETURN OF SERVICE

Certified Mail return receipt received on _____ day of _____, 2006. (Return receipt attached hereto)

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GINGER WHITE,

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v.

SEARS ROEBUCK AND CO., ALLISON B. MOON,
LVNV FUNDING, LLC, and RESURGENT CAPITAL
SERVICES, LP,

Defendants.

CV-06-

323

SUMMONS

NOTICE TO:

LVNV Funding, LLC
15 S. Main Street, Ste 700
Greenville, South Carolina 29601

D003

CIRCUIT CLERK

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NOTICE
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Defendants.

CV-06-323

CIRCUIT CLERK

2006 DEC -1 PM 3:30

RECEIVED
JAN 1 2007
JACKSON COUNTY, ALABAMA

SUMMONS

NOTICE TO: Ms. Allison B. Moon
105 Rochester Court
Easley, South Carolina 29640

DAWZ

The Complaint which is attached to this Summons is important, and you must take immediate action to protect your rights. You or your attorney are required to mail or hand deliver a copy of a written answer, either admitting or denying each allegation in the Complaint to the Plaintiff's attorney, **Will J. Parks, III, 107 East Laurel Street, Scottsboro, Alabama 35768 (256/574-1162)**. This answer must be mailed or delivered within thirty (30) days after this Summons and Complaint were delivered to you, or a judgment by default may be entered against you for the money or other things demanded in the Complaint. You must also file the original of your answer with the Clerk of this Court.

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SERVICES, LP,

Defendants.

CV-06-

323

SUMMONS

NOTICE TO:

Sears Roebuck and Company
The Corporation Company
2000 Interstate Park Drive, Ste 204
Montgomery, Alabama 36109

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CIRCUIT CLERK

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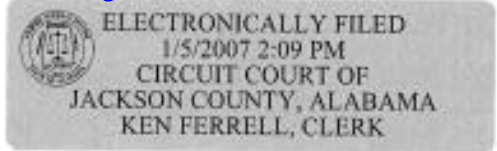
Clerk

Date

Ken Ferrell 12/1/06

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GINGER WHITE,)	
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Plaintiff,)	
)	
vs.)	CIVIL ACTION NO.: CV2006-323
)	
SEARS ROEBUCK AND CO., ALLISON)	
B. MOON, LVNV FUNDING, LLC, and)	
RESURGENT CAPITAL SERVICES, LP,)	
)	
Defendants.)	

NOTICE OF REMOVAL

TO: JACKSON COUNTY, CIRCUIT COURT CLERK

PLEASE TAKE NOTICE that SEARS ROEBUCK AND CO., ALLISON B. MOON, LVNV FUNDING, LLC, and RESURGENT CAPITAL SERVICES, LP, the defendants in the above-entitled action, has this day filed its Petition for Removal, a copy of which is attached hereto, in the office of the Clerk in the United States District Court for the Northern District of Alabama Northeastern Division.

s/ Elizabeth J. Kanter
Allan S. Jones (JON120)
Jay A. Stewart (STE165)
Elizabeth J. Kanter (JAC084)
Attorneys for Defendant, Sears Roebuck and Co.

OF COUNSEL:
CARR, ALLISON, PUGH, HOWARD,
OLIVER & SISSON, P.C.
100 Vestavia Parkway, Suite 200
Birmingham, Alabama 35216
(205) 822-2006
(205) 822-2057 facsimile

EXHIBIT

B

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing pleading upon all counsel of record in this cause by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 5th day of January, 2007:

Will J. Parks, III, Esq.
107 East Laurel Street
Scottsboro, Alabama 35768

Neal D. Moore, III, Esq.
Ferguson, Frost & Dodson, L.L.P.
2500 Acton Road
Suite 200
Birmingham, Alabama 35243

s/ Elizabeth J. Kanter
OF COUNSEL